



STATE OF CALIFORNIA

## STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0092  
1-916-324-1825 • FAX 1-916-322-4530  
[www.boe.ca.gov](http://www.boe.ca.gov)

SEN. GEORGE RUNNER (Ret.)  
First District, Lancaster

FIONA MA, CPA  
Second District, San Francisco

JEROME E. HORTON  
Third District, Los Angeles County

DIANE L. HARKEY  
Fourth District, Orange County

BETTY T. YEE  
State Controller

CYNTHIA BRIDGES  
Executive Director

February 20, 2015

Dear Interested Party:

Enclosed is the Second Discussion Paper on proposed rulemaking with respect to prepaid mobile telephony services. Before the issue is presented at the Board's May 27, 2015 Business Taxes Committee meeting, staff would like to invite you to discuss the issue and present any additional suggestions or comments. Accordingly, a second interested parties meeting is scheduled as follows:

**March 4, 2015  
Room 122 at 10:00 a.m.  
450 N Street, Sacramento, CA**

If you would like to participate by teleconference, call 1-888-808-6929 and enter access code 7495412. You are also welcome to submit your comments to me at the address or fax number in this letterhead or via email at [Susanne.Buehler@boe.ca.gov](mailto:Susanne.Buehler@boe.ca.gov) by March 19, 2015. Copies of the materials you submit may be provided to other interested parties, therefore, ensure your comments do not contain confidential information. Please feel free to publish this information on your website or distribute it to others that may be interested in attending the meeting or presenting their comments.

If you are interested in other Business Taxes Committee topics refer to our webpage at (<http://www.boe.ca.gov/meetings/btcommittee.htm>) for copies of discussion or issue papers, minutes, a procedures manual, and calendars arranged according to subject matter and by month.

Thank you for your consideration. We look forward to your comments and suggestions. Should you have any questions, please feel free to contact our Business Taxes Committee staff member Mr. Robert Wilke at 1-916-445-2137, who will be leading the meeting.

Sincerely,

Susanne Buehler, Chief  
Tax Policy Division  
Sales and Use Tax Department

SB:rsw

## Enclosures

cc: (all with enclosures, via email and/or hardcopy as requested)

Honorable Jerome E. Horton, Chairman, Third District  
Senator George Runner (Ret.), Vice Chair  
Honorable Fiona Ma, CPA, Member, Second District  
Honorable Diane L. Harkey, Member, Fourth District  
Honorable Betty T. Yee, State Controller, c/o Ms. Yvette Stowers  
Ms. Kari Hammond, Board Member's Office, Third District  
Mr. David Hunter, Board Member's Office, Third District  
Ms. Shellie Hughes, Board Member's Office, Third District  
Mr. Sean Wallentine, Board Member's Office, First District  
Mr. Lee Williams, Board Member's Office, First District  
Mr. Alan Giorgi, Board Member's Office, First District  
Mr. Brian Wiggins, Board Member's Office, First District  
Mr. Jim Kuhl, Board Member's Office, Second District  
Ms. Kathryn Asprey, Board Member's Office, Second District  
Mr. John Vigna, Board Member's Office, Second District  
Mr. Tim Morland, Board Member's Office, Second District  
Mr. Russell Lowery, Board Member's Office, Fourth District  
Mr. Ted Matthies, Board Member's Office, Fourth District  
Mr. Neil Shah, Board Member's Office, Fourth District  
Ms. Lynne Kinst, Board Member's Office, Fourth District  
Ms. Yvette Stowers, State Controller's Office  
Ms. Cynthia Bridges (MIC 73)  
Mr. Randy Ferris (MIC 83)  
Mr. David Gau (MIC 101)  
Mr. Jeffrey L. McGuire (MIC 43)  
Mr. Todd Gilman (MIC 70)  
Mr. Wayne Mashihara (MIC 46)  
Mr. Kevin Hanks (MIC 49)  
Mr. Mark Durham (MIC 67)  
Mr. Robert Tucker (MIC 82)  
Mr. Jeff Vest (MIC 85)  
Mr. Jeff Angeja (MIC 85)  
Mr. David Levine (MIC 85)  
Mr. Bradley Heller (MIC 82)  
Mr. Stephen Smith (MIC 82)  
Mr. John Thiella (MIC 73)  
Mr. Andrew Kwee (MIC 82)  
Mr. Richard Parrot (MIC 57)  
Ms. Sandy Barrow (MIC 31)  
Mr. Clifford Oakes (MIC 50)  
Mr. Marc Alviso (MIC 101)  
Mr. Chris Lee (MIC 101)  
Ms. Laureen Simpson (MIC 70)  
Ms. Karina Magana (MIC 46)

Mr. Bill Benson (MIC 67)  
Mr. Michael Patno (MIC 50)  
Mr. Robert Wilke (MIC 50)

## **SECOND DISCUSSION PAPER**

### **Proposed Rulemaking with respect to Prepaid Mobile Telephony Services**

#### **Issue**

Whether the Board should initiate rulemaking to interpret, clarify, and make specific the recent legislation regarding Prepaid Mobile Telephony Services (prepaid MTS).

#### **Background**

Assembly Bill 1717 (AB 1717) (Stats. 2014, Ch. 885) established the Prepaid Mobile Telephony Services Surcharge Collection Act and the Local Prepaid Mobile Telephony Services Collection Act (commencing with Revenue and Taxation Code (RTC) sections 42001 and 42100 respectively). The bills also amended and added certain RTC sections with respect to the Emergency Telephone Users Surcharge (ETUS) Act (commencing with RTC section 41001).

This paper provides a general overview of the new legislation and includes staff's suggested regulatory language to be considered for proposed rulemaking. (See Exhibits 1-6.)

#### **Prepaid Mobile Telephony Services Surcharge Collection Act**

##### *General*

On and after January 1, 2016, a prepaid MTS surcharge is imposed on each prepaid consumer for amounts paid for prepaid MTS. A seller is required to collect the surcharge as a percentage of the retail sales price from the prepaid consumer at the time of each retail transaction in this state. The prepaid MTS surcharge is in lieu of the surcharges and user fees imposed on amounts paid for prepaid MTS under prior law and collected and paid to the California Public Utilities Commission (PUC), the Board of Equalization (Board), local agencies, and local jurisdictions by providers and suppliers of telephone communication services.

##### *Definition of Seller and Direct Seller*

Pursuant to RTC section 42004, a "seller," means a person that sells prepaid MTS to a person in a retail transaction. RTC section 42004, further provides that a "direct seller" means a prepaid MTS provider or service supplier<sup>1</sup> that makes a sale of prepaid mobile telephony services directly to a prepaid consumer for any purpose other than for resale in the regular course of business. A direct seller includes: a telephone corporation<sup>2</sup>, a person that provides interconnected Voice over Internet Protocol (VoIP) service<sup>3</sup>, and a retailer that is a member of the same commonly controlled group or combined reporting group as a telephone corporation or provider of VoIP service.

---

<sup>1</sup> Pursuant to RTC section 41007, a "service supplier" means: (1) a person supplying intrastate telephone communication services to a service user in this state pursuant to California intrastate tariffs and providing access to the "911" emergency system by utilizing the digits 9-1-1, (2) a person supplying Voice over Internet Protocol (VoIP) service to a service user in this state and providing access to the "911" emergency system by utilizing the digits 9-1-1, or (3) a person supplying intrastate telephone communication services for whom the PUC Commission, by rule or order, modifies or eliminates the requirement for that person to prepare and file California intrastate tariffs.

<sup>2</sup> As defined pursuant to section 234 of the Public Utilities Code.

<sup>3</sup> As defined in section 285 of the Public Utilities Code.

## **SECOND DISCUSSION PAPER**

### **Proposed Rulemaking with respect to Prepaid Mobile Telephony Services**

According to the above definitions, the term seller is inclusive of direct sellers. However, as further discussed in this paper, a seller who is also a direct seller has different registration and reporting requirements than those sellers who do not meet the definition of a direct seller.

#### *Retail Sale Location / Transaction Location*

A retail transaction occurs *in this state* for purposes of the surcharge if the consumer makes the retail transaction in person at a business location in this state (point-of-sale transaction). If this is not applicable, a retail transaction occurs in this state if the consumer's address is in this state (known-address transaction). For these purposes, a known-address transaction occurs in this state under any one of the following circumstances:

- The retail sale involves the shipping of an item to be delivered to, or picked up by, the prepaid consumer at a location in this state.
- The prepaid consumer's address is known by the seller to be in this state. The consumer's address is considered to be "known by the seller" if the seller's records maintained in the ordinary course of business indicate that the prepaid consumer's address is in this state and the records are not made or kept in bad faith.
- The prepaid consumer provides an address during consummation of the retail transaction that is in the state, including an address provided with respect to the payment instrument if no other address is available and the address is not given in bad faith.
- The mobile telephone number associates with a location in this state.

For purposes of determining a local charge, a retail transaction occurs at only one location. When the retail transaction occurs in person at a business location in this state (point-of-sale), it is presumed the consumption of, use of, or access to prepaid MTS occurs at the business location. If the retail transaction is not a point-of-sale transaction, it is presumed the consumption of, use of, or access to prepaid MTS occurs at the known address, and the location is determined by the circumstances bulleted above, in descending order.

#### *Determining the Prepaid MTS Surcharge Rate*

The Board is required to calculate the prepaid MTS surcharge rate annually by November 1<sup>st</sup> by adding the ETUS (as determined by the Office of Emergency Services) and the PUC reimbursement fee and telecommunications universal services surcharges (as determined by the PUC).

The Board is required to post on its Internet Web site the combined total of the rates of the prepaid MTS surcharge and the rate or rates of local charges for each local jurisdiction. (See page 6 for information regarding local charges.) The Board is also required to separately post on its Internet Web site individual rates for each of the PUC surcharges applicable to prepaid MTS, the ETUS rate, and each of the individual local charges applicable to prepaid MTS.

## **SECOND DISCUSSION PAPER**

### **Proposed Rulemaking with respect to Prepaid Mobile Telephony Services**

#### Administration

##### *Registration*

Every person that sells prepaid MTS to a person in a retail transaction in this state is required to be registered with the Board. The Board is required to establish a method for registration that uses the existing registration process for a permit or account under the Sales and Use Tax Law.

Every application for registration must be on a form prescribed by the Board and shall set forth the name under which the applicant intends to transact business, the location of its place or places of business, and such other information as the Board may require.

##### *Payment and Collection*

Every prepaid consumer of mobile telephony services in this state is liable for the prepaid MTS surcharge and any local charges until those amounts are paid to this state. However, a prepaid consumer's payment to a registered seller relieves the consumer from further liability. A seller is required to separately state the combined prepaid MTS surcharge and local charges on an invoice, receipt, or other similar document provided to the prepaid consumer, or otherwise disclosed electronically to the prepaid consumer, at the time of the retail transaction. A prepaid MTS provider must also offer prepaid consumers the option to make payment for additional prepaid service directly to the prepaid MTS provider at the provider's retail location or Internet Web site.

A prepaid MTS surcharge that is required to be collected by a seller, and any amount unreturned to the prepaid consumer that is not owed as part of the surcharge but was collected under the seller's representation that it was owed as part of the surcharge, constitute a seller's debt to the state. A local charge shall be collected by a seller, and any amount unreturned to the prepaid consumer that is not owed as part of the local charge, but was collected under the seller's representation that it was owed as part of the local charge, constitutes a seller's debt jointly to the state, for purposes of collection on behalf of, and payment to, the local jurisdiction and to the local jurisdiction imposing the charge.

Furthermore, a prepaid MTS surcharge that has been collected and not yet remitted to the Board, constitutes a seller's debt to the state. With respect to local charges collected and not yet remitted to the Board, such amounts shall constitute a seller's debt jointly to the state, for purposes of collection on behalf of, and payment to, the local jurisdiction and to the local jurisdiction imposing the charge.

##### *Reporting*

The prepaid MTS surcharge, less the two percent retailer reimbursement amount for sellers other than direct sellers, is due and payable to the Board quarterly on or before the last day of the next month following each calendar quarter. In addition, a return must be filed with the Board using electronic media at the time of payment.

Existing law authorizes the payment of the amount due and the filing of returns for periods other than the period or periods specified in the tax and fee laws administered under the Fee Collections Procedure Law (FCPL) (commencing with RTC section 55001).

## **SECOND DISCUSSION PAPER**

### **Proposed Rulemaking with respect to Prepaid Mobile Telephony Services**

Both the electronic application and tax return must be authenticated in a form or pursuant to a method as the Board may prescribe.

For direct sellers, the portion of the prepaid MTS surcharge that consists of the ETUS is due and payable to the Board under the same payment period as their ETUS account. A direct seller is required to remit the portion of the prepaid MTS surcharge that consists of the PUC surcharges to the PUC and the portion that consists of the local charge to the local agency imposing the charge.

For sellers other than direct sellers, the prepaid MTS charges and local charges are due and payable to the Board in accordance with their Prepaid MTS account.

#### *Seller Reimbursement of 2%*

A seller that is not a direct seller is allowed to deduct and retain an amount equal to two percent of the amounts it collects from prepaid consumers for the prepaid MTS surcharge and local charges, on a pro rata basis, according to that portion of the revenues collected for the ETUS, the PUC surcharges, and local charges.

#### *Electronic Funds Transfer*

The Board is generally authorized to administer and collect the prepaid MTS surcharge pursuant to the FCPL. However, with respect to electronic funds transfer (EFT), a seller that is required, or elects, to file EFT for sales and use tax purposes must remit the prepaid MTS surcharge by EFT.

#### *Reliance on the Board's Internet Web site*

A seller may rely on the accuracy of the information posted on the Board's Internet Web site in collecting and remitting all amounts of the prepaid MTS surcharge and local charges. A direct seller must utilize the rates on the Board's Internet Web site when determining what amounts to remit to the PUC, Board, and each local jurisdiction or local agency.

A seller is discharged from any liability for additional prepaid MTS surcharge or local charges and is also relieved from refunding amounts collected and remitted to the Board to the customer if:

- A seller relies in good faith on Board-provided information to match either a point-of-sale transaction location, or the five digit postal ZIP Code of the prepaid consumer's known-address, to the applicable MTS surcharge and local charges amount;
- A seller collects that amount from the prepaid consumer; and
- A seller remits the amount to the Board in compliance with the Prepaid MTS Surcharge Act.

The provisions above are applicable even if the ZIP code of the prepaid consumer's address in a known-address transaction corresponds to more than one local charge in a known-address transaction.

## **SECOND DISCUSSION PAPER**

### **Proposed Rulemaking with respect to Prepaid Mobile Telephony Services**

#### Exemptions/Deductions

##### *Lifeline Exemption*

A prepaid consumer's purchase of prepaid MTS, either alone or in combination with mobile data or other services, is exempt from the prepaid MTS surcharge, if all of the following apply:

- The prepaid consumer is certified as eligible for the state or federal lifeline program.
- The seller is an authorized lifeline service provider, under the state or federal lifeline program.
- The lifeline program specifies the charges for the prepaid services at issue are exempt from the surcharges and fees that comprise the prepaid MTS surcharge.

##### *Resale*

As noted, the prepaid MTS surcharge and local charges apply to retail transactions that occur in this state. A retail transaction includes the purchase of prepaid MTS for any purpose other than resale in the regular course of business. The Board is required to establish procedures to be utilized by a seller to document that a sale is not a retail transaction.

##### *Bad Debts*

A seller is relieved from the liability to collect the prepaid MTS surcharge that became due and payable, insofar as the base upon which the surcharge is imposed is represented by accounts found to be worthless and charged off for income tax purposes. If a seller is not required to file income tax returns, a bad debt deduction is allowed if the amount is charged off in accordance with generally accepted accounting principles.

If a seller subsequently collects any amounts for which a bad debt deduction was taken, the amount so collected is required to be reported and paid to the Board on the first return subsequently filed.

##### *Credit for Charges Paid to Other States*

A credit against, but not to exceed, the prepaid MTS surcharge and local charges is allowed where the prepaid consumer paid ETUS, state utility regulatory commission fees, state universal service charges, or local charges on the purchase to any other state, political subdivision thereof, or the District of Columbia. The credit shall be apportioned to the charges against which it is allowed in proportion to the amounts of those charges.

##### *Bundled Transactions*

The prepaid MTS surcharge applies to the entire price where prepaid mobile telephony services are sold in combination with mobile data services or any other services or products for a single price. However, if the prepaid MTS is sold with a cellular telephone and the purchase price for the prepaid cellular phone component of the bundled charge is disclosed to the consumer on a receipt, invoice, or other written electronic documentation provided to the prepaid consumer, the prepaid MTS surcharge and local charge may be calculated on an amount that excludes the separately stated cellular telephone price. Furthermore, the prepaid MTS surcharges and local charges do not apply to a transaction where a minimal prepaid MTS amount is sold with a cellular telephone for a single, non-itemized bundled price. For these purposes, a minimal amount includes a service allotment denominated as 10 minutes or less, or \$5 or less.



## **SECOND DISCUSSION PAPER**

### **Proposed Rulemaking with respect to Prepaid Mobile Telephony Services**

#### Refunds

##### *Refunds of Excess Collections*

A seller that collects an amount in excess of the prepaid MTS surcharge and local charges owed may refund those amounts to the prepaid consumer. The seller may refund those amounts even though the surcharge amount was paid to the Board and no corresponding credit or refund has yet been secured.

##### *Claims for Refund*

Every person required to collect or pay the prepaid MTS surcharge or local charges, may apply to the Board for a claim for refund of any amount that has been erroneously collected and paid to the Board, unless otherwise specified.

#### Local Prepaid Mobile Telephony Services Collection Act

##### *Legislative Intent*

The Local Prepaid Mobile Telephony Services Collection Act (Local Act) provides that it “is the intention of the Legislature that this part shall preempt the provisions pertaining to the tax or charge rate, base, and method of collection contained in all local ordinances, rules, or regulation concerning the imposition of a local charge upon the consumption of prepaid mobile telephony services, to the extent those provisions are inconsistent with the provisions of this part and Part 21 (commencing with Section 42000.) It is not the intent of the Legislature to otherwise preempt, limit, or affect the general authority of local jurisdictions to impose a utility user tax (UUT), local 911 charge, or any other local charges.”

##### *General*

On and after January 1, 2016, a local charge by a local agency is imposed on prepaid MTS and a seller should collect the amount from the prepaid consumer at the same time and in the same manner as the prepaid MTS surcharge is collected under the Prepaid MTS Collection Act; provided that on or before September 1, 2015, the local agency enters into a contract with the Board to collect and administer the local charges.

Notwithstanding any other law, on and after January 1, 2016, AB1717:

- Suspends the utility user tax on the consumption of prepaid MTS in the city or county at the rate specified in its ordinance and replaces it with specific tiered rates based on the existing city or county rate.
- Suspends a charge rate applicable to prepaid MTS for communication services or local “911” emergency telephone access and replaces it with a specified calculated rate percentage.

Furthermore, on and after January 1, 2016, the Local Act shall be:

- The exclusive collection method for the local UUT, local 911 charges, and any other local charge imposed on consumers using prepaid MTS, and for defining the scope of the tax or charge.
- The complete substitute for the UUT rate set forth in the local ordinance at the specified tiered rate. The bill also states that “this part shall not preempt, limit, or affect the general

## **SECOND DISCUSSION PAPER**

### **Proposed Rulemaking with respect to Prepaid Mobile Telephony Services**

authority of local jurisdictions to impose a utility user tax, local 911 charge, or any other local charges.”

#### *Contract*

In the contract, the local agency must certify to the Board that its ordinance applies its local charge to prepaid MTS and that the local agency agrees to indemnify, and hold and save harmless, the Board, its officers, agents, and employees for any and all liability for damages that may result from collection pursuant to the contract. The local agency must also certify the amount of the local 911 charge or the applicable tiered rate for a UUT.

#### *Administration*

The Board is required to perform all functions incident to the collection of the local charges of a city or county, except with respect to direct sellers. The Board must collect such local charges from sellers, other than direct sellers, in the same manner as it collects the MTS surcharge under the Prepaid MTS Surcharge Act, subject to specified limitations.

#### *Local Jurisdiction Responsibilities*

Those functions for which the local jurisdiction or local agency is solely responsible include:

- Defending any claim regarding the validity of the ordinance in its application to prepaid MTS.
- Interpreting any provision of the ordinance, except to the extent specifically superseded by the Local Act.
- Responding to specified customer claims for refund involving: (1) rebutting the presumed location of the retail transaction; (2) a customer that is exempt from the local charge under the local enactment; or (3) challenges to the validity of a local tax ordinance, in whole or part.
- Certifying that the city or county ordinance applies the local charge to prepaid MTS and agreeing to indemnify and hold harmless the Board, its officers, agents, and employees for any and all liability for damages that may result from collection of the local charge.
- Reallocation of local charges as a result of correcting errors relating to the location of the point of sale of a seller or the known address of a consumer, for up to two past quarters from the date of knowledge.
- Enforcement, including audits, of the collection and remittance of local charges by direct sellers pursuant to the local agency’s ordinance.

In the event a local agency adopts a new local charge after September 1, 2015, the Local Act requires the local agency to enter into a contract with the Board, as provided, on or before December 1<sup>st</sup>, with collection of the local charge to commence April 1<sup>st</sup> of the next calendar year. With respect to an increase to an existing local charge after September 1, 2015, the local agency is required to notify the Board in writing on or before December 1<sup>st</sup>, with collection of the local charge to commence April 1<sup>st</sup> of the next calendar year.

However, when a local agency notifies the Board in writing that a local charge is no longer imposed, or has decreased, or is inaccurate, the Board is required to promptly post the

## **SECOND DISCUSSION PAPER**

### **Proposed Rulemaking with respect to Prepaid Mobile Telephony Services**

recalculated rate(s). The change becomes operative on the first day of the calendar quarter commencing more than 60 days from the date of the local agency notification.

#### *Board Audit Duties*

The Board's audit duties include verification that the seller complied with the Local Act. The Local Act allows the Board to perform or to contract with third parties to perform the following functions:

- Allocate and transmit collected local charges in the Prepaid Mobile Telephony Services Fund to the appropriate local jurisdictions.
- Audit proper collection and remittance of the local charge.
- Respond to requests from sellers, customers, boards, and others regarding local charges.

Existing disclosure laws apply to any third party contract. Contingent fee arrangements, as payment for services rendered, are prohibited in any third party contract.

#### *Disclosing Information*

The Local Act requires the Board to make available to a requesting local agency any information that is reasonably available to the Board regarding the proper collection and remittance of a local charge of that local agency by a seller, including a direct seller. Such information is subject to the confidentiality requirements of RTC Sections 7284.6, 7284.7, and 19542.

#### *Deposit of Local Revenues*

All local charges collected by the Board are to be deposited in the State Treasury and held in trust for the local taxing jurisdiction. Local charges consist of all taxes, charges, interest, penalties, and other amounts collected and paid to the Board, less payments for refunds and reimbursement to the Board for expenses to administer and collect the local charges.

The Board is required to periodically transmit the funds to the local jurisdictions as promptly as feasible and at least once in each calendar quarter. The Board must also furnish a quarterly statement to the local jurisdictions indicating the amounts paid and costs withheld. A local agency shall pay to the Board its pro rata share of the Board's cost of collection and administration.

### Emergency Telephone Users Surcharge Law

#### *General*

On and after January 1, 2016, a prepaid MTS surcharge is imposed on amounts paid for prepaid MTS in lieu of the ETUS.

#### *Calculation of the Emergency Telephone Users Surcharges Collected / Guaranteed Funding*

Beginning with the 2016-17 fiscal year, the Board is required to determine annually, by November 1<sup>st</sup>, the total amount collected for the ETUS under the prepaid MTS program. The calculation shall be net of the two percent reimbursement retention and less the expenses incurred and reimbursed to the Board for the portion of the prepaid MTS surcharge that is for the ETUS.

## **SECOND DISCUSSION PAPER**

### **Proposed Rulemaking with respect to Prepaid Mobile Telephony Services**

The Board is required to post on its Internet Web site by December 15<sup>th</sup> following the calculation, whether the total amount collected exceeds or is less than \$9.9 million dollars, along with the assumptions, methodology and the calculation the Board used to determine how much was collected for the ETUS pursuant to the prepaid MTS program.

#### *Billing for Deficiency*

For any fiscal year that less than \$9.9 million dollars was collected, the Board shall calculate the deficiency and bill each direct seller or prepaid MTS provider its pro rata share of that deficiency based upon each direct seller's or prepaid MTS provider's percentage share of the total California intrastate prepaid mobile telephony services revenue as reported to the PUC.

A billing may not be issued any later than three years after the date the Board calculates the deficiency. After 60 days, the liability becomes final, unless a timely petition for redetermination is filed within 60 days of the issuance of the billing. At the expiration of the 60-day period, interest begins to accrue. If a liability is not paid when due and payable, a 10% penalty is applied to the billed amount.

Within 45 days of a request by the Board, the PUC is required to provide the Board the following:

- The name and address of each prepaid MTS provider and direct seller;
- Each prepaid MTS provider's and direct seller's California intrastate prepaid MTS revenue;
- Each prepaid MTS provider's and direct seller's percentage share of total California intrastate prepaid MTS revenue for the prior fiscal year; and
- Any other information the Board deems necessary.

RTC section 41033 also requires each prepaid MTS provider or direct seller to report to the Board the amount of that portion of the prepaid MTS that is for the ETUS, remitted by the provider or seller pursuant to ETUS Law for the prior fiscal year. The report is due on or before September 1<sup>st</sup> each year beginning with the 2016-17 fiscal year, and ending with the 2018-19 fiscal year.

#### **Discussion**

With respect to the prepaid MTS surcharge, the Prepaid Mobile Telephony Services Surcharge Collection Act authorizes the Board to prescribe, adopt, and enforce regulations relating to their administration and enforcement, including collections, reporting, refunds, and appeals. Likewise, the Local Act authorizes the Board to prescribe and adopt rules and regulations as may be necessary or desirable for the administration and collection of local charges and the distribution of the local charges collected.

The statutes for both the prepaid MTS surcharges and local charges provide that the collection and administration shall be in accordance with the FCPL. There are specified limitations with respect to certain responsibilities of a local agency or jurisdiction, electronic fund transfers, and filing returns.

## **SECOND DISCUSSION PAPER**

### **Proposed Rulemaking with respect to Prepaid Mobile Telephony Services**

With the Board's responsibilities of administering a new program for the prepaid MTS surcharges and local charges, staff believes it will be helpful to consolidate guidance into the proposed "Prepaid Mobile Telephony Services Regulations" (Title 18, Division 2, proposed Chapter 5.7, commencing with proposed section 2460) as discussed below. Staff further believes that amendments are necessary within the existing ETUS Regulations.

#### Interested Parties Comments

Staff distributed the Initial Discussion Paper for this issue on December 22, 2015, in which staff presented its initial proposed regulatory language. Staff conducted an interested parties meeting to discuss the proposed prepaid MTS regulations and amended ETUS regulations on January 6, 2015. During the meeting, interested parties appeared in agreement with staff's proposed and amended regulations. There was general discussion regarding a direct seller's reporting period for the local charges and the process for claiming a lifeline exemption, among other items.

Staff received comments from Ms. Brenda Narayan, of MuniServices, LLC (MuniServices), in a letter dated January 21, 2015 (Exhibit 7). She explained that MuniServices generally approves of the contents of the Initial Discussion Paper and proposed regulations. Ms. Narayan provided two specific comments regarding the proposed rulemaking. The first comment expressed support for a monthly reporting period for direct sellers with respect to remitting local charges to the local jurisdictions. The second comment suggested that staff use the phrase "right to utilize and/or access" rather than "right to access" in staff's proposed definition of prepaid mobile telephony services.

With respect to MuniServices' first comment, staff understands that a monthly reporting basis for reporting local charges to the local jurisdictions is the current industry practice. Unfortunately, staff does not believe the Board has authority to prescribe on what basis direct sellers report to the local jurisdictions or local agencies. RTC section 42010(f)(3) provides that direct sellers shall remit local charges, if applicable, to the local jurisdiction or local agency imposing the charge. RTC section 42105 further provides that the local jurisdiction or local agency shall be solely responsible for the enforcement of the collection and remittance of local charges by direct sellers pursuant to the local jurisdiction's or local agency's ordinance. Therefore, staff believes that the reporting period for local charges must be pursuant to the local ordinances and cannot be specified within the Board's regulations. Staff further notes that with respect to sellers, other than direct sellers, proposed Regulation 2460 specifies that the reporting basis for returns filed with the Board shall be for calendar quarters. While the previously issued Initial Discussion Paper specified that existing law authorizes the payment of the amount due and the filing of returns for periods other than the period or periods specified in the tax and fee laws administered under the FCPL, staff proposes to also include this guidance in proposed Regulation 2460, subdivision (e).

With respect to MuniServices' second comment, staff has no objection and has included the suggested revision to the term prepaid MTS as discussed in the section titled "Staff's Proposed and Amended Regulations" below. MuniServices made additional comments with respect to issues not related to the proposed rulemaking and those comments will be addressed separately outside of the interested parties process.

## **SECOND DISCUSSION PAPER**

### **Proposed Rulemaking with respect to Prepaid Mobile Telephony Services**

Staff received written comments from Ms. Jamie Hastings sent on behalf of CTIA-The Wireless Association, in a letter dated January 21, 2015 (Exhibit 8). In the letter, she expressed overall appreciation of the Board's efforts to clarify this issue. Ms. Hastings noted that staff's proposed *Administration* regulation required that a receipt list the sales price subject to the surcharge and local charges. She proposed adding clarifying language to ensure that "tax included" pricing can be provided on a receipt. The proposal suggested that while the surcharge amounts would be separately itemized on the receipt, the sales prices subject to the surcharge and local charges would not. After consideration of this comment, staff has revised its previously proposed administration regulation to add language clarifying that prepaid MTS may be sold for a price that includes all applicable taxes and fees; however, the receipt or a similar document provided to the customer must still include a separate statement of the amount which is for the combined prepaid MTS surcharge and local charges, as required by RTC section 42010, subdivision (i).

#### Local Charges and Changes to Existing Local Charges

Pursuant to RTC section 42101.5, a local agency must enter into a contract with the Board by September 1, 2015, before the Board can perform the functions set forth in RTC section 42103 with respect to the collection and administration of existing local charges. Section 42101.5 provides further guidance with respect to contracts for new local charges and changes to existing local charges, after September 1, 2015.

AB1717 is silent on how to handle a scenario where a local agency or jurisdiction imposes local charges on prepaid MTS as of September 1, 2015, but is unable to contract with the Board to perform the functions set forth in RTC section 42103 with respect to those charges until after September 1, 2015. Staff recognizes that there is a possibility that a local agency or jurisdiction might not be able to contract with the Board on or before September 1, 2015. Therefore, staff proposes to add an alternative effective date, which applies when a local agency or jurisdiction contracts with the Board after September 1, 2015.

While staff's initial proposed *Administration* regulation provided for alternative effective dates, other than April 1<sup>st</sup>, for new local charges or increases to existing local charges, staff realizes that this could create the potential that sellers of prepaid MTS would be required to program their point-of-sale systems for new and increasing rates on a quarterly basis which may create an undue burden on those sellers. Staff further believes that having a single effective date for new and increasing local charges (April 1<sup>st</sup>) is the most cost efficient means to administer those changes. As such, staff's proposed Regulation 2460, as discussed below, provides that new and increasing local charges are to be effective April 1<sup>st</sup> provided that the applicable requirements regarding written notification and contracting with the Board are timely met.

#### Posting and Calculation of Combined Rates

As provided in RTC section 42010 (c), the Board "shall post, for each local jurisdiction, the combined total of the rates of prepaid MTS surcharge and the rate or rates of local charges, as calculated pursuant to Sections 42102 and 42102.5, that each local jurisdiction has adopted, not later than December 1 of each year, on its Internet Web site. The posted combined rate shall be the rate that applies to all retail transactions during the calendar year beginning April 1 following the posting." Given that local jurisdictions have until December 1<sup>st</sup> to contract or notify the Board of any new or increasing local charges and those charges are effective April 1<sup>st</sup> of the

## **SECOND DISCUSSION PAPER**

### **Proposed Rulemaking with respect to Prepaid Mobile Telephony Services**

following year (RTC section 42101.5), staff has concluded that the December 1<sup>st</sup> date is in reference to the adoption of the local rates. Staff believes there may be confusion as to whether the phrase “not later than December 1 of each year” is in reference to the date the local jurisdictions adopted the charge or the date by which the Board shall post the combined charges. Therefore, staff proposes language in subdivision (j) for clarification. Staff also proposes language in subdivision (j) to clarify that the local rates for which a local jurisdiction contracts with the Board to collect by September 1, 2015, are effective commencing on January 1, 2016.

#### Staff’s Proposed and Amended Regulations

Staff proposes to add the following three regulations to the proposed prepaid MTS regulations: Regulation 2460, *Administration*; Regulation 2461, *Exemptions, Deductions, Credits, and Specific Applications of Tax*; and Regulation 2462, *Refunds of Excess Charges Collected*.

#### *Administration*

With respect to administration, staff proposes to add Regulation 2460, *Administration*, as provided in Exhibit 1, to:

- Define key terms used in the proposed prepaid MTS regulations.
- Clarify that the term “direct seller” includes “a person that provides” Voice over Internet Protocol service and includes a retailer “engaged in business in this state” as defined by RTC section 6203.
- Clarify that the term “prepaid mobile telephony services” means the right to utilize and/or access mobile telecommunications services which are prepaid and utilized by a mobile device and not the “right to utilize a mobile device” to access the services.
- Provide that registration will occur by electronic means and clarify the registration requirements of direct sellers.
- Emphasize that the surcharges are imposed on the prepaid consumer and the sellers are obligated to collect and separately state the combined prepaid MTS surcharge and local charges.
- Facilitate compliance by specifying that a seller is obligated to provide a “receipt” to its customers and the receipt must contain certain elements.
- Reiterate that direct sellers shall continue to remit the portion of the prepaid MTS surcharge that consists of the ETUS to the Board, the portion of the prepaid MTS surcharge that consists of the PUC surcharges to the PUC, and the portion that consists of the local charge to the local agency imposing the charge.
- Specify that returns are required to be filed using the Board’s online filing program and the amounts required to be reported to the Board may be for quarterly periods other than calendar quarters and for periods other than quarterly periods.
- Clarify that a deduction for “seller reimbursement retention” must be taken in the corresponding period in which the sale of the prepaid MTS surcharge occurred or a claim for refund should be filed.
- Specify that the term EFT is defined pursuant to Sales and Use Tax Regulation 1707, *Electronic Funds Transfer*. This is with respect to those sellers required to remit

## SECOND DISCUSSION PAPER

### Proposed Rulemaking with respect to Prepaid Mobile Telephony Services

payment for the collected prepaid MTS surcharges and local charges by EFT because they are required, or have elected, to remit their sales and use tax liabilities by EFT.

- Specify that a seller is required to maintain records in accordance with Special Taxes Administration Regulation 4901, *Records*.
- Provide that relief of liability may be granted pursuant to Special Taxes Administration Regulations 4902, *Relief from Liability*, and 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*.
- Specify the effective dates for new local charges, increases or decreases to existing local charges, and expiring or inaccurate local charges.
- Specify how the Board shall annually calculate the prepaid MTS rate.
- Clarify that the total combined prepaid MTS rate and rate or rates of local charges calculated by the Board by November 1, 2015 and posted by December 1, 2015 shall be the effective rate beginning January 1, 2016.
- Specify when the Board shall post the combined prepaid MTS rate and rate or rates of local charges for changes made after September 1, 2015.

#### *Exemptions, Deductions, Credits, and Specific Applications of Tax*

With respect to exemptions, deductions, credits, and other specific transactions, staff proposes to add Regulation 2461, *Exemptions, Deductions, Credits, and Specific Applications of Tax*, as provided in Exhibit 2, to:

- Prescribe the form of a resale certificate and establish an alternate process to document that a sale was not a retail transaction in the event a resale certificate is not taken timely.
- Clarify when a seller may take a “bad debt” deduction, and that such deductions should be adjusted for any seller reimbursement retained by the seller. Staff also proposes the regulation specify the types of records a seller needs to maintain to support the bad debt deduction.
- Specify the other types of transactions in which an exemption, deduction, or credit may apply including bundled transactions for a minimal amount of prepaid MTS, certain transactions for the Lifeline services, and certain transactions where state or local 911 taxes were previously paid to another state.

#### *Refunds*

With respect to refunds, staff proposes to add Regulation 2462, *Refunds of Excess Charges Collected*, as provided in Exhibit 3, to:

- Clarify that either a seller of prepaid MTS or a prepaid consumer may file a claim for refund, within the statute of limitation periods established by RTC section 55222, 55222.1, and 55222.2.
- Specify that certain claims for refund of local charges must be made to the local agency or local jurisdiction, and not the Board.

#### *Emergency Telephone Users Surcharge Regulations*

Staff proposes to amend ETUS Regulations 2401, *Definitions* and 2422, *Returns and Payments*, as provided in Exhibit 4 and 5, to:



## **SECOND DISCUSSION PAPER**

### **Proposed Rulemaking with respect to Prepaid Mobile Telephony Services**

- Define the terms mobile telephony services, prepaid mobile telephony services, and direct sellers.
- Specify that a direct seller may be required to report and remit to the Board on a monthly, quarterly, or calendar year basis in the form as prescribed by the Board.
- Specify that a direct seller must report to the Board by September 1<sup>st</sup> the amount of the prepaid mobile telephony services surcharge collected for the prior fiscal year; and at the time of filing each surcharge return, certain information with respect to service users who have refused to pay the surcharge.

#### Other Amendments

Regulation 2413, *Exemptions from Surcharge*, provides that the ETUS does not apply to charges for service when imposition of such surcharge would be in violation of the Constitution of the United States, the United States Code, or the laws of the State of California. Pursuant to subdivision (b)(7), this includes charges for service to “[f]oreign governments and career consular officers and employees of certain foreign governments who are exempt from tax by treaties and other diplomatic agreements with the United States.”

Per the United States Department of State, Office of Foreign Missions (OFM), foreign governments and accredited members are exempt from tax under the Vienna Convention on Consular Relations (VCCR), however this exemption does not apply to "charges levied for specific services rendered." (VCCR Article 49.1(e).) Furthermore, OFM considers the ETUS as a charge for specific services rendered, and not a tax. In particular, the ETUS provide funds for official public safety answering points as well as the network and infrastructure that support 911 services. To that extent, the ETUS on foreign missions and their members is not in violation of the U.S. Constitution, the VCCR, or other treaties, which exempt foreign missions and their members from tax.

As such staff recommends deleting subdivision (b)(7), as provided in Exhibit 6, to be consistent with the guidance provided by OFM.

#### **Summary**

Staff appreciates the input provided by the interested parties and looks forward to continuing to work with them to develop guidance so that everyone affected by the legislation can easily understand and comply with their obligations under the prepaid MTS Acts and the amendments to the ETUS Law. Staff welcomes any comments, suggestions, and input on this issue and invites interested parties to participate in the March 4, 2015, interested parties meeting. The deadline for interested parties to provide written responses regarding this discussion paper is March 19, 2015.

Prepared by the Tax Policy Division, Sales and Use Tax Department and the Program Policy and Administration Branch, Special Taxes and Fees.

Current as of February 19, 2015

PrepaidMTSSDP.docx

**Regulation 2460, *Administration***

(a) Definitions. For purposes of this chapter (Prepaid Mobile Telephony Services Regulations, commencing with Regulation 2460), the following terms shall have the following meanings:

(1) "Board" means the State Board of Equalization.

(2) "Direct seller" means a prepaid MTS provider or service supplier, as defined in Revenue and Taxation Code section 41007, that makes a sale of prepaid mobile telephony services directly to a prepaid consumer for any purpose other than for resale in the regular course of business.

A direct seller includes, but is not limited, to any of the following:

(A) A telephone corporation, as defined by section 234 of the Public Utilities Code.

(B) A person that provides "interconnected Voice over Internet Protocol (VoIP) service," as that term is defined in section 285 of the Public Utilities Code.

(C) A "retailer engaged in business in this state," as defined by Revenue and Taxation Code section 6203, that is a member of the same commonly controlled group, as defined in Revenue and Taxation Code section 25105, or that is a member of the same combined reporting group, as defined in paragraph (3) of subdivision (b) of section 25106.5 of Title 18 of the California Code of Regulations, as an entity described in subparagraph (A) or (B).

(3) "Emergency telephone users surcharge" means surcharges authorized pursuant to the Emergency Telephone Users Surcharge Act (commencing with Revenue and Taxation Code section 41001) to be collected from prepaid consumers of mobile telephony services.

(4) "In this state" means within the exterior limits of the State of California and includes all territory within those limits owned by or ceded to the United States of America.

(5) "Local charges" means the utility user taxes as described in Revenue and Taxation Code section 42102, and charges for access to communication services or to local "911" emergency telephone systems, as described in Revenue and Taxation Code section 42102.5.

(6) "Local jurisdiction" or "local agency" means a city, county, or city and county, which includes a charter city, county, or city and county.

(7) "Mobile data service" has the same meaning as defined in section 224.4 of the Public Utilities Code.

(8) "Mobile telephony service" or "MTS" has the same meaning as defined in section 224.4 of the Public Utilities Code.

(9) "Ordinance" refers to an ordinance of a local jurisdiction or local agency imposing a local charge, including any local enactment relating to the filing of a refund or a claim arising under the ordinance.

(10) "Person" includes any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, this state, any city, county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.

(11) "Prepaid consumer" means a person who purchases prepaid mobile telephony services in a retail transaction.

(12) "Prepaid mobile telephony services" means the right to utilize and/or access mobile telecommunications services or information services, including the download of digital products delivered electronically, content, and ancillary services, or both telecommunications services and information services, that must be purchased in advance of usage in predetermined units or dollars and are utilized by means of a mobile device.

For these purposes, "telecommunications service" and "information service" have the same meanings as defined in section 153 of Title 47 of the United States Code.

(13) "Prepaid MTS provider" means a telephone corporation, as defined in section 234 of the Public Utilities Code, that provides prepaid mobile telephony services.

(14) "Prepaid MTS surcharge" means the surcharge that consists of the emergency telephone users surcharge and the Public Utilities Commission surcharges, as calculated pursuant to subdivision (b) of Revenue and Taxation Code section 42010, that is required to be collected by a seller from a prepaid consumer.

(15) "Public Utilities Commission" or "Commission" means the Public Utilities Commission created by section 1 of article XII of the California Constitution.

(16) "Public Utilities Commission surcharges" means surcharges authorized by the Public Utilities Commission to be billed and collected from end-use consumers of wireless communications services, and of which the Commission provides the Board with notice pursuant to section 319 of the Public Utilities Code, including:

(A) The California High-Cost Fund-A Administrative Committee Fund program surcharge (Section 275.6 of the Public Utilities Code).

(B) The California High-Cost Fund-B Administrative Committee Fund program surcharge (Section 739.3 of the Public Utilities Code).

(C) The Deaf and Disabled Telecommunications Program Administrative Committee Fund surcharge (Section 2881 of the Public Utilities Code).

(D) The California Teleconnect Fund Administrative Committee Fund program surcharge (Section 280 of the Public Utilities Code).

(E) The California Advanced Services Fund program surcharge (Section 281 of the Public Utilities Code).

(F) The Moore Universal Telephone Service Act (Article 8 (commencing with section 871) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code).

(G) Public Utilities Commission reimbursement fees imposed pursuant to Chapter 2.5 (commencing with section 401) of Part 1 of Division 1 of the Public Utilities Code.

(17) "Retail transaction" means the purchase of prepaid mobile telephony services, either alone or in combination with mobile data or other services, from a seller for any purpose other than resale in the regular course of business. For these purposes, a "purchase" means any transfer of title or possession, exchange, or barter, conditional or otherwise of prepaid mobile telephony services for a consideration, including such a transfer of a mobile telephone service communication device (commonly termed a cell phone) when purchased with prepaid mobile telephony services for a single, nonitemized price, and for other than a minimal amount of prepaid mobile telephony services.

(18) "Sale" means any transfer of title, possession, exchange, or barter, conditional or otherwise of prepaid mobile telephony services for a consideration, including such a transfer of a mobile telephone service communication device (commonly termed a cell phone) when sold with prepaid mobile telephony services for a single, nonitemized price, and for other than a minimal amount of prepaid mobile telephony services.

(19) "Seller" means a person that sells prepaid mobile telephony service to a person in a retail transaction.

(b) Registration. Every person that sells prepaid mobile telephony service to a person in a retail transaction is required to register with the Board pursuant to Revenue and Taxation Code section 42022. Direct sellers are required to be registered with the Board under the Emergency Telephone Users Surcharge Law (commencing with Revenue and Taxation Code section 41001). Direct sellers are not required to register as a seller of prepaid MTS. A seller, other than a direct seller, shall register for a Prepaid MTS account.

Every application for registration shall be made in a form prescribed by the Board and shall set forth the name under which the applicant transacts or intends to transact business, the location of his or her place or places of business, and such other information as the Board may require. An application for registration shall be authenticated in a form or pursuant to methods as may be prescribed by the Board.

(c) Payment of Tax by Purchasers. Every consumer of prepaid mobile telephony services in this state is liable for the prepaid MTS surcharge and any local charges until those amounts are paid to the Board, unless a receipt, as provided by subdivision (d), is obtained from a registered seller.

(d) Receipts. Each seller required to collect the prepaid MTS surcharge and local charges from a prepaid consumer must give a receipt to each prepaid consumer at the time of the retail transaction with a separate statement of the combined prepaid MTS surcharge and local charges, even if the prepaid mobile telephony services is sold for a price that includes all applicable taxes and fees. For purposes of this subdivision, services are sold on a tax-included basis if the seller discloses to the consumer in the receipt that the price of the services includes applicable taxes and fees.

For the purposes of this regulation, a receipt need not be in any particular form and may consist of an invoice, receipt, or other similar document provided to the prepaid consumer, or otherwise disclosed electronically to the prepaid consumer, but must show the following:

- (1) The name and place of business of the seller.
- (2) The date on which the service was sold.
- (3) A combined amount of the prepaid MTS surcharge and local charges collected from the prepaid consumer. If the services were not sold to the prepaid consumer on a tax-included basis, the receipt must also separately state the sales price subject to the surcharge and local charges.

(e) Payment and Returns.

(1) Payment. Except as otherwise provided in subdivision (e)(4) and (e)(6), the prepaid MTS surcharge and local charges are due and payable to the Board quarterly on or before the last day of the next month following each calendar quarter.

(2) Returns. Notwithstanding Revenue and Taxation Code section 55040, and except as otherwise provided in subdivision (e)(6), every person liable for the prepaid MTS surcharge must file a return online with the Board through the Board's Internet Web site quarterly, on or before the last day of the next month following each calendar quarter.

(3) Reporting periods. Notwithstanding subdivisions (e)(1) or (e)(2), the Board may require returns and payment of the prepaid MTS surcharge and local charges required to be reported to the Board pursuant to the Prepaid Mobile Telephony Services Surcharge Collection Act, for quarterly periods other than calendar quarters, or for reporting periods other than quarterly periods.

(4) Seller Reimbursement Retention. A seller, that is not a direct seller, may deduct and retain a reimbursement amount equal to two percent of the amounts it collects from prepaid consumers for the prepaid MTS surcharge and local charges, on a pro rata basis, according to that portion of the revenues collected for each of the following:

- (A) The emergency telephone users surcharge.
- (B) The Public Utilities Commission surcharges.
- (C) The local charges.

Such reimbursement is to be taken on the return for the corresponding reporting period in which the sale of the prepaid MTS occurs. If a seller claims only some or none of the reimbursement amount during the corresponding reporting period in which the sale occurred, the seller is not allowed to claim a credit for the remaining unclaimed reimbursement on a subsequent return. Rather, the seller must file a claim for refund.

(5) Electronic Funds Transfer. Notwithstanding Revenue and Taxation Code section 55050, any person required, or that elects, to remit its sales and use tax liabilities due by electronic funds transfer (pursuant to Revenue and taxation Code section 6479.3), must also remit the prepaid MTS surcharge and local charges by electronic funds transfer.

For purposes of this section, "electronic funds transfer" shall have the same meaning as defined in California Code of Regulations, Title 18, Section 1707, *Electronic Funds Transfer*.

(6) Direct Sellers. A direct seller shall remit the prepaid MTS surcharge and local charges as follows:

(A) That portion of the prepaid MTS surcharge that consists of the Public Utilities Commission surcharges shall be remitted to the Public Utilities Commission, and not to the Board, for those retail transactions with a prepaid consumer in the state, along with any reports required by the Public Utilities Commission.

(B) That portion of the prepaid MTS surcharge that consists of the emergency telephone users surcharge shall be remitted to the Board pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Revenue and Taxation Code section 41001)) and reported in a form as prescribed by the Board for those retail transactions with a prepaid consumer in the state.

(C) Local charges, if applicable, shall be remitted to the local jurisdiction or local agency imposing the local charge, and not to the Board. Remittance of the local charges shall be separately identified from any other local taxes or other charges that are remitted to the local jurisdiction or local entity imposing the local tax or other charge.

For direct sellers, the prepaid MTS surcharge is due and payable to the Board under the same reporting and payment period as their emergency telephone users (911) surcharge account, as provided by California Code of Regulations, Title 18, section 2422, *Returns, Reporting and Payment*.

(f) Records. A seller of prepaid MTS shall maintain and make available for examination on request by the Board or its authorized representatives, records in the manner set forth in California Code of Regulations, Title 18, section 4901, *Records*.

(g) Relief from liability. In addition to the provisions set forth in California Code of Regulations, Title 18, section 4902, *Relief from Liability*, a seller may be relieved of the liability for the prepaid MTS surcharge and local charges as set forth in (g)(1) and (g)(2):

(1) Point-of-Sale Transaction. A seller is not liable for any additional prepaid MTS surcharges or local charges, and is not required to refund any amounts collected from the prepaid consumer when all of the following apply:

(A) A seller relies in good faith on the information provided by the Board to match the location of the point-of-sale transaction to the applicable prepaid MTS charge or local charge, and

(B) A seller collects such amounts from the prepaid consumer and remits such amounts to the Board.

(2) Known-Address Transaction. A seller is not liable for any additional prepaid MTS surcharges or local charges, and is not required to refund any amounts collected from the prepaid consumer when all of the following apply:

(A) A seller relies in good faith with due diligence on credible information to match the five-digit postal zip code of the prepaid consumer's address to the applicable prepaid MTS surcharge and local charge, and

(B) A seller collects such amounts from the prepaid consumer and remits such amounts to the Board.

The provisions of subdivision (g)(2) apply even if the five-digit postal zip code of the prepaid consumer's address corresponds to more than one local charge

(h) Innocent Spouse Relief. A spouse or registered domestic partner claiming relief from liability for any prepaid MTS surcharge or local charge, interest, and penalties shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, are met.

(i) Local Charges

(1) Ordinances in effect as of September 1, 2015. On and after January 1, 2016, a local charge imposed by a local agency on prepaid mobile telephony services shall be collected from the prepaid consumer by a seller at the same time and in the same manner as the prepaid MTS surcharge is collected under Part 21 (commencing with Revenue and Taxation Code section 42001) provided that, on or before September 1, 2015, the local agency enters into a contract with the Board pursuant to Revenue and Taxation Code section 42101.5.

In the event a local agency or local jurisdiction does not enter into a contract with the Board by September 1, 2015, the local agency may enter into a contract with the Board, pursuant to Revenue and Taxation Code section 42101.5, on or before December 1<sup>st</sup>, with collection of the local charge to commence April 1<sup>st</sup> of the next calendar year. Thereafter, all subsequently enacted local charges, increases to local charges, or other changes thereto, shall become operative pursuant to paragraphs (2), (3), (4) and (5) of this subdivision.

(2) New Charges. When a local agency or local jurisdiction adopts a new local charge, after September 1, 2015, the local agency shall enter into a contract with the Board, pursuant to Revenue and Taxation Code section 42101.5, on or before December 1<sup>st</sup>, with collection of the local charge to commence April 1<sup>st</sup> of the next calendar year.

(3) Increases in Local Charges. When a local agency or local jurisdiction increases an existing local charge, after September 1, 2015, the local agency shall provide the Board written notice of the increase, on or before December 1<sup>st</sup>, with collection of the local charge to commence April 1<sup>st</sup> of the next calendar year.

(4) Expirations of, Decreases in, or Inaccurate Local Charges. When a local agency or local jurisdiction notifies the Board that a local charge is no longer imposed, has decreased, or is inaccurate, the change becomes operative on the first day of the calendar quarter commencing more than 60 days from the date the local agency provides written notification to the Board.

(5) Advance written notification. Notwithstanding subdivision (i)(4), when a local agency or local jurisdictions provides advance written notification to the Board that a local charge shall expire or decrease as of a specified date that is subsequent to the first day of the calendar quarter commencing more than 60 days from the date of notification, the change becomes operative on the first day of the calendar quarter commencing after the specified date.

**(j) Posting and Calculation of Combined Rates**

(1) Calculation of Prepaid MTS Surcharge Rate. The prepaid MTS surcharge rate shall be annually calculated by the Board by no later than November 1 of each year commencing November 1, 2015, by adding the following:

(A) The surcharge rate reported pursuant to subdivision (d) of Revenue and Taxation Code section 41030; and

(B) The Public Utilities Commission's reimbursement fee and telecommunications universal service surcharges, established by the Public Utilities Commission pursuant to subdivisions (a) and (b) of Section 319 of the Public Utilities Code.

The prepaid MTS surcharge rate calculated pursuant to this subdivision shall be the prepaid MTS surcharge rate, exclusive of any applicable local charges, that applies to all retail transactions during the calendar year beginning January 1 following the calculation.

(2) Calculation of Combined Rate. The combined total of the prepaid MTS surcharge rate calculated pursuant to subdivision (j)(1), and the rate or rates of local charges imposed as of September 1, 2015, that are required to be collected by a seller from a prepaid consumer on and after January 1, 2016, shall be posted on the Board's Internet Web site by December 1, 2015. The posted combined rate shall be the rate that applies to all retail transactions during the calendar year beginning January 1, 2016, unless there is a later change in the combined rate.



(3) New Local Charges and Increases to Existing Local Charges. After September 1, 2015, the Board shall post on its Internet Web site, for each local jurisdiction, the combined total of the rates of the prepaid MTS surcharge and the rate or rates of local charges, as calculated pursuant to Sections 42102 and 42102.5, that each local jurisdiction has adopted and provided written notice to the Board of, on or before December 1 of each year, as provided in subdivision (i). The Board shall post the combined total of the rates of the prepaid MTS surcharge and rate or rates of local charges on its Internet Web site by March 1, of each year. The posted combined total of the rates of the prepaid MTS surcharge and rate or rates of local charges shall be the rate that applies to all retail transactions during the calendar year beginning April 1 following the posting, unless there is a later change in the combined rate.

**Regulation 2461. *Exemptions, Deductions, Credits, and Specific Applications of Tax.***

(a) In General. This regulation explains the exemptions, deductions, credits, and specific applications of tax to the following types of transactions:

- (1) Sales for resale
- (2) Bad debts
- (3) Bundled transactions
- (4) Lifeline transactions
- (5) Transactions in which a surcharge or local charge was paid to another state

(b) Sales for Resale.

The burden of proving that a sale of prepaid mobile telephony services is not at retail is upon the seller unless the seller timely takes in good faith a certificate from the purchaser that the prepaid mobile telephony services are purchased for resale. If timely taken in proper form as set forth in subdivision (b)(1)(A) and in good faith from a person who is engaged in the business of selling prepaid mobile telephony services and who holds a Prepaid MTS Account as required by Regulation 2460, *Administration*, the certificate relieves the seller from the duty of collecting the prepaid mobile telephony services surcharge and local charges. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the prepaid mobile telephony services, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the prepaid mobile telephony services to the purchaser. A resale certificate remains in effect until revoked in writing.

(1) Form of Certificate.

(A) Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale certificate with respect to the sale of the prepaid mobile telephony services described in the document if it contains all of the following essential elements:

1. The signature of the purchaser, purchaser's employee or authorized representative of the purchaser.
2. The name and address of the purchaser.
3. The number of the Prepaid MTS Account held by the purchaser. If the purchaser is not required to hold a Prepaid MTS Account because the purchaser makes no sales of prepaid mobile telephony services in this State, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a Prepaid MTS Account in lieu of a Prepaid MTS Account number.
4. A statement that the prepaid mobile telephony services described in the document is purchased for resale. The document must contain the phrase "for resale." The use of phrases such as "nontaxable," "not subject to surcharge," "exempt," or similar terminology is not acceptable.

5. Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the grounds that it is undated.)

(B) A document containing the essential elements described in subdivision (b)(1)(A) is the minimum form which will be regarded as a resale certificate. However, in order to preclude potential controversy, the seller should timely obtain from the purchaser a certificate substantially in the form shown in Appendix A of this regulation.

(C) Blanket Resale Certificate. If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is subject to the surcharge, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller within the seller's billing cycle or prior to delivery of the prepaid mobile telephony services to the purchaser (whichever is the later), or that the prepaid mobile telephony services surcharge or local charge was paid to the seller. The purchaser may avoid this burden by using the procedures described in subdivision (b)(1)(D) below.

(D) Qualified Resale Certificate. If a purchaser wishes to designate on each purchase order whether the prepaid mobile telephony services being purchased are for resale, the seller should obtain a qualified resale certificate, i.e., one that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether or not the prepaid mobile telephony services covered by the order is purchased for resale. The use of the phrases "for resale," "resale = yes," "not subject to surcharge," "surcharge = no," or similar terminology on a purchase order, indicating that the prepaid mobile telephony services surcharge or local charge should not be added to the sales invoice will be regarded as designating that the prepaid mobile telephony services described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1)(A). However, a purchase order where the applicable amount of the surcharge is shown as \$0 or is left blank will not be accepted as designating that the prepaid mobile telephony services is purchased for resale, unless the purchase order also includes the phrase "for resale" or other terminology described above to specify that the prepaid mobile telephony services is purchased for resale. If each purchase order does not so specify, or is not issued timely within the meaning of subdivision (b), it will be presumed that the prepaid mobile telephony services covered by that purchase order was not purchased for resale and that sale or purchase is subject to the surcharge. If the purchase order includes both prepaid mobile telephony services to be resold and prepaid mobile telephony services to be used, the purchase order must specify which prepaid mobile telephony services are purchased for resale and which prepaid mobile telephony services are purchased for use.

The seller shall retain copies of the purchase orders along with the qualified resale certificates in order to support the sales for resale.

(E) If the seller does not timely obtain a resale certificate, the fact that the purchaser deletes the prepaid surcharge from the seller's billing, provides a Prepaid MTS Account

to the seller, or informs the seller that the transaction is "not subject to the surcharge" does not relieve the seller from liability for the surcharge nor from the burden of proving the sale was for resale.

(2) Good Faith.

In absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains the essential elements as described in subdivision (b)(1)(A) and otherwise appears to be valid on its face. If the purchaser insists that the purchaser is buying for resale prepaid mobile telephony services of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific prepaid mobile telephony services is being purchased for resale in the regular course of business.

(3) Improper Use of Certificate.

Any person, including any officer or employee of a corporation, who gives a resale certificate for prepaid mobile telephony services which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable for the amount of prepaid mobile telephony services surcharge or local charge that would be due if he or she had not given such resale certificate.

(4) Other Evidence to Rebut Presumption of Imposition of the Prepaid Mobile Telephony Services Surcharge or Local Charges.

A sale for resale is not subject to the mobile telephony services surcharge or local charges. A person who purchases prepaid mobile telephony services for resale and who subsequently uses the prepaid mobile telephony services owes the surcharge on that use. A resale certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the surcharge. Consequently, if the seller does not timely obtain a resale certificate containing the essential elements as described in subdivision (b)(1)(A), the seller will be relieved of liability for the surcharge only where the seller shows that the prepaid mobile telephony services:

- (A) Were in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding them for sale in the regular course of business, or
- (B) Are being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding them for sale in the regular course of business, or
- (C) Were consumed by the purchaser and the surcharge was reported directly to the Board by the purchaser on the purchaser's return, or
- (D) Were consumed by the purchaser and the surcharge was paid to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

(5) Use of XYZ Letters.

A seller who does not timely obtain a resale certificate may use any verifiable method of establishing that it should be relieved of liability for the surcharge under subdivision (b)(4). One method that the Board authorizes to assist a seller in satisfying its burden that the sale was for resale or that the surcharge was paid, is the use of "XYZ letters." XYZ letters are letters in a form approved by the Board which are sent to some or all of the seller's purchasers inquiring as to the purchaser's disposition of the prepaid mobile telephony services purchased from the seller. An XYZ letter will include certain information and request responses to certain questions, set forth below. The XYZ letter may also be further customized by agreement between the Board's staff and the seller to reflect the seller's particular circumstances.

(A) An XYZ letter may include the following information: seller's name and Prepaid MTS Account number, date of invoice(s), invoice number(s), purchase order number(s), amount of purchase(s), and a description of the prepaid mobile telephony services purchased or other identifying information. A copy of the actual invoice(s) may be attached to the XYZ letter. The XYZ letter will request the purchaser to complete the statement and include the purchaser's name, seller's Prepaid MTS Account number and nature of the purchaser's business. The statement shall be signed by the purchaser, purchaser's employee or authorized representative, and include the printed name of person signing the certificate, title, date, telephone number and city.

(B) An XYZ letter will request that the purchaser, purchaser's employee or authorized representative check one of the boxes provided inquiring as to whether the prepaid mobile telephony services in question were:

1. Purchased for resale and resold, without any use other than retention, demonstration, or display while being held for sale in the regular course of business;
2. Purchased for resale and presently in resale inventory, without having been used for any purpose other than retention, demonstration, or display while being held for sale in the regular course of business;
3. Purchased for resale but consumed or used; or
4. Purchased for use.

5. When the purchaser answers either (3) or (4) affirmatively (box checked), the XYZ letter will inquire further whether:

- A. The surcharge was paid directly to the Board on the purchaser's return, and if so, in what amount;
- B. The surcharge was added to the billing of the seller and remitted to the seller, and if so, in what amount;
- C. The surcharge was paid directly to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.
- D. The purchaser confirms that the purchase is subject to the surcharge.

(C) A response to an XYZ letter is not equivalent to a timely and valid resale certificate. A purchaser responding affirmatively to questions reflected in subparagraphs 1, 2, or 3 of subdivision (b)(5)(B) will be regarded as confirming the seller's belief that a sale was for resale for purposes of subdivision (b)(6). However, the Board is not required to relieve a seller from liability for the collection of the surcharge based on a response to an XYZ letter. The Board may, in its discretion, verify the information provided in the response to the XYZ letter, including making additional contact with the purchaser or other persons to determine whether the purchase was for resale or for use or whether the surcharge was paid by the purchaser. When the Board accepts the purchaser's response to an XYZ letter as a valid response, the Board shall relieve the seller of liability for collection of the surcharge.

(D) When there is no response to an XYZ letter, the Board staff should consider whether it is appropriate to use an alternative method to ascertain whether the seller should be relieved of the surcharge under subdivision (b)(4) with respect to the questioned or unsupported transaction(s).

**(6) Purchaser's Liability for Prepaid Mobile Telephony Services Surcharge or Local Charges.**

A purchaser who issues a resale certificate containing the essential elements as described in subdivision (b)(1)(A) and that otherwise appears valid on its face, or who otherwise purchases prepaid mobile telephony services that is accepted by the Board as purchased for resale pursuant to subdivision (b)(5) and who thereafter makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business is liable for the surcharge on the purchase price of the prepaid mobile telephony services. The surcharge is due at the time the prepaid mobile telephony services is first stored or used and must be reported and paid by the purchaser with the purchaser's return for the period in which the prepaid mobile telephony services is first so stored or used.

**(c) Bad Debts.**

A seller of prepaid mobile telephony services is relieved from liability to collect the prepaid mobile telephony services surcharge insofar as the measure of the surcharge is represented by accounts found worthless and charged off for income tax purposes (which include circumstances where the seller's income is reported on a related person's income tax return and the bad debt is charged off on that return) or, if the seller is not required to file income tax returns and the seller's income is not reported on another person's return, charged off in accordance with generally accepted accounting principles. A seller may claim a bad debt deduction provided that the prepaid MTS surcharge was actually paid to the state.

This deduction should be taken on the return filed for the period in which the amount was found worthless and charged off for income tax purposes or, if the seller is not required to file income tax returns, charged off in accordance with generally accepted accounting principles.

Failure to take the deduction on the proper return will not in itself prevent the allowance of a refund measured by an amount for which a seller could have taken a timely deduction provided a claim for refund is filed with the Board within the limitation periods specified in section 55222, 55222.1, and 55222.2 of the Revenue and Taxation Code.

(1) Amount Subject to Deduction.

(A) Receipts Subject to the Prepaid Mobile Telephony Services Surcharge. If the amount of an account found to be worthless and charged off is comprised in part of receipts not subject to the surcharge such as sales for resale or sales subject to a Lifeline exemption and in part of receipts subject to the surcharge, a bad debt deduction may be claimed only with respect to the unpaid amount upon which the surcharge has been paid. The allowable amount of deduction shall be adjusted for amounts claimed as retailer reimbursement. It shall be presumed that retailer reimbursement was claimed on all previously reported amounts subject to the surcharge. In determining that amount, all payments and credits to the account may be applied: (1) ratably against the various elements comprising the amount the purchaser contracted to pay (pro rata method); (2) may be applied as provided in the contract of sale (contract method); or (3) may be applied by another method which reasonably determines the amount subject to the surcharge (alternative method). When claiming a bad debt deduction or refund using an alternative method, the seller must include a clear explanation of that method. After having applied payments and credits using one method and claiming a deduction or refund based on such method, a seller shall not thereafter reapply the payments or credits using another method with respect to such losses previously claimed.

(B) Expenses of Collection. No deduction is allowable for expenses incurred by the seller in attempting to enforce collection of any account receivable, or for that portion of a debt recovered that is retained by or paid to a third party as compensation for services rendered in collecting the account.

(2) Worthless Account Subsequently Collected. If any account found worthless and charged off is thereafter collected by the seller, in whole or in part, the amount subject to the prepaid mobile telephony services surcharge so collected shall be included in the first return filed after such collection and tax shall be paid on such amount with the return. The same percentage of the account which the seller claimed as an allowable bad debt deduction or refund shall be used to determine the percentage of the recovery subject to the mobile telephony services surcharge. The percentage subject to the mobile telephony services surcharge of any amounts received from a third party for the sale of an account after the seller has found them to be worthless and has claimed a bad debt deduction or refund are regarded as amounts subsequently collected for purposes of this provision, and the seller must include such amounts in the first return filed after receipt of such amounts and pay the prepaid mobile telephony services surcharge thereon.

(3) Records. In support of deductions or claims for refund for bad debts, sellers must maintain adequate and complete records showing:

- (A) Date of original sale.
- (B) Name and address of purchaser.
- (C) Amount purchaser contracted to pay.
- (D) Amount on which seller paid the prepaid mobile telephony services surcharge.

(E) The jurisdiction(s) where the local prepaid mobile telephony services surcharge, when applicable, were allocated.

(F) All payments or other credits applied to account of purchaser.

(G) Evidence that the uncollectible portion of gross receipts on which the prepaid mobile telephony services surcharge was paid actually has been legally charged off as a bad debt for income tax purposes (whether or not the income tax return has yet been filed) or, if the seller is not required to file income tax returns and the seller's income is not reported on another person's return, charged off in accordance with generally accepted accounting principles.

(H) The percentage subject to the surcharge of the amount charged off as a bad debt properly allocable to the amount on which the seller reported and paid the prepaid mobile telephony services surcharge.

**(d) Bundled Transactions.**

(1) The prepaid mobile telephony services surcharge and local charges apply to the entire selling price when there is a sale of prepaid mobile telephony services in combination with mobile data services or any other services or products for a single price.

(2) The prepaid mobile telephony services surcharge and local charges apply to the entire selling price when there is a sale of prepaid mobile telephony services in combination with a mobile telephone communication device for a single nonitemized price, except as provided in subparagraphs (A) or (B).

(A) The purchase price of the mobile telephone communication device in the bundled transaction is disclosed to the customer on a receipt, invoice, or other documentation provided to the customer. In such an instance, the prepaid mobile telephony services surcharge and local charges shall only apply to the remaining charge after excluding the selling price of the mobile telephone communication device; or

(B) The amount of the prepaid mobile telephony services sold with the mobile telephone communication device is a minimal amount. In such an instance, the prepaid mobile telephony services surcharge and local charges do not apply to the entire selling price.

For the purposes of this subdivision, the amount of prepaid mobile telephony services will be deemed as minimal if the service allotment is for 10 minutes or less or is five dollars or less.

**(e) Lifeline Transactions.**

A lifeline transaction is a transaction in which a person purchases prepaid mobile telephony services from a seller authorized to provide lifeline service under the state or federal lifeline programs. The state lifeline program means the program furnishing lifeline voice communication service pursuant to the Moore Universal Telephone Service Act. The purchase in a retail transaction in this state of prepaid mobile telephony services, either alone or in combination with mobile data or other services, by a consumer is exempt from the prepaid mobile telephony services surcharge if all of the following apply:



***Exemptions, Deductions, Credits, and Specific Applications of Tax***

(1) The prepaid consumer is certified as eligible for the state or federal lifeline programs. The seller must retain sufficient documentation supporting amounts claimed as subject to the lifeline program.

(2) The seller is authorized to provide lifeline service under the state or federal lifeline programs. If the seller is not an authorized provider of lifeline service, the exemption does not apply.

(3) The exemption is applied only to the amount paid for the portion of the prepaid mobile telephony service that the lifeline program specifies is exempt from the surcharge.

(f) Transactions in Which a Surcharge or Local Charge was Paid to Another State.

A credit shall be allowed against, but shall not exceed, the prepaid mobile telephony services surcharge and local charges imposed on any prepaid consumer of prepaid mobile telephony services to the extent that the prepaid consumer has paid emergency telephone users charges, state utility regulatory commission fees, state universal service charges, or local charges on the purchase to any other state, political subdivision thereof, or the District of Columbia. The credit shall be apportioned to the charges against which it is allowed in proportion to the amounts of those charges.

APPENDIX A

California Resale Certificate - Prepaid Mobile Telephony Services

The burden of proving that a sale of prepaid mobile telephony services is not a retail transaction is upon the seller unless the seller timely takes in good faith a certificate from the purchaser that the prepaid mobile telephony services are purchased for resale. If timely taken in proper form and in good faith from a person who is engaged in the business of selling prepaid mobile telephony services and who holds a Prepaid MTS account as required by Regulation 2460, Administration, this certificate relieves the seller from the duty of collecting the prepaid mobile telephony services surcharge and local charges. If the purchaser is not required to hold a Prepaid MTS Account because the purchaser makes no sales of prepaid mobile telephony services in this State, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a Prepaid MTS Account in lieu of a Prepaid MTS Account number.

I HEREBY CERTIFY:

1. I hold valid California prepaid mobile telephony services account number: \_\_\_\_\_.
2. This certificate is for the purchase from \_\_\_\_\_ of the property described below.  
[Vendor's name]
3. I will resell the item(s) described in paragraph 5, which I am purchasing for resale in the regular course of my business operations, and I will do so prior to making any storage, use, or other consumption of the item(s) other than retention, demonstration, and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, **I will owe the prepaid mobile telephony services surcharge and local charges**, based on the sales price of the prepaid MTS, or as otherwise provided by law.

I further understand that if any tangible personal property is involved, the transaction might also be subject to sales or use tax in this state, and this certificate does not relieve me of any obligations imposed pursuant to California's Sales and Use Tax Law.

4. Description of property to be purchased:

---

---

5. I have read and understand the following:

Name of Purchaser	
Signature of Purchaser, Purchaser's Employee or Authorized Representative	
Printed Name of Person Signing	Title
Address of Purchaser	
Telephone Number	Date

**Regulation 2462, *Refunds of Excess Charges Collected***

(a) **Excess Charges Collected.** Except as otherwise provided in subdivision (c), when an amount represented by a seller to a prepaid consumer of prepaid mobile telephony services as constituting charges for the prepaid MTS surcharge or local charge is in excess of the prepaid MTS surcharge or local charges imposed, or is otherwise erroneously or illegally charged or computed under the representation that it was owed as part of the prepaid MTS surcharge or local charge when it is not owed as part of the prepaid MTS surcharge or local charge and is actually paid by the consumer to the seller, the amount so paid constitutes excess charges collected. The seller may refund the excess charges collected to the prepaid consumer who paid the amount to the seller even if the seller has not yet secured a credit or refund from the Board. Any excess charges collected and not refunded to the customer constitute a debt owed to the State, or jointly to the State, for purposes of collection on behalf of, and payment to, the local jurisdiction and to the local jurisdiction imposing the local charge.

(b) **Claim for Refund.** Except as otherwise provided in subdivision (c), every person required to pay the prepaid MTS surcharge or local charge, including the seller, may apply to the Board for a claim for refund of any amount that has been erroneously or illegally collected or computed and paid to the Board. In order to be timely, the claim for refund must be filed with the Board within the limitation period specified in sections 55222, 55222.1, and 55222.2 of the Revenue and Taxation Code.

(c) A prepaid consumer must file a claim for refund for the local charge with the local jurisdiction or local agency, and not the Board, in the following circumstances:

- (1) When a prepaid consumer chooses to rebut the presumed location of a retail transaction, as provided in subdivision (b) of Section 42014, the prepaid consumer shall file a claim and declaration under penalty of perjury on a form established by the city or county clerk of the local jurisdiction or local agency indicating the actual location of the retail sale. The claim shall be processed in accordance with the provisions of the local enactment that allows the claim to be filed.
- (2) A prepaid consumer that is exempt from the local charge under the local enactment may file a claim for a refund with the local jurisdiction or local agency in accordance with the refund provisions of the local enactment that allows the claim to be filed.
- (3) In connection with any actions or claims relating to or arising from the invalidity of a local tax ordinance, in whole or in part.

(d) **Relief of Liability.** A seller is not liable for any additional prepaid MTS surcharges or local charges, and is not required to refund any amounts collected from the prepaid consumer under the conditions set forth in subdivision (g)(1) and (g)(2) of Regulation 2460, *Administration*.

**Regulation 2401. Definitions.**

*Reference:* Sections 41007, 41011, 41015, 41046 , ~~and 41021~~, and 42004 Revenue and Taxation Code.

(a) Service Supplier.

(1) "Service Supplier" means both of the following:

(A) Any person supplying intrastate telephone communication services to any service user in this state and providing access to the "911" emergency system by utilizing the digits 9-1-1; and

(B) Any person supplying Voice over Internet Protocol (VoIP) service to any service user in this state and providing access to the "911" emergency system by utilizing the digits 9-1-1.

(2) Notwithstanding paragraph (1):

(A) Where intrastate telephone communication services are supplied through a prepaid telephone calling card, the "service supplier" means the person that provides access to its lines and switches for telephone services and is responsible for deducting the amounts charged for telephone services used from amounts of service available on the prepaid telephone calling card.

(B) A wholesaler or retailer of prepaid telephone calling cards is not a service supplier unless it provides access to its lines and switches for telephone services and is responsible for deducting the amounts charged for telephone services used from amounts of service available on the prepaid telephone calling card.

(b) Intrastate Telephone Communication Services. "Intrastate telephone communication services" means all local or toll telephone services where the point or points of origin and the point or points of destination of the services are all located in this state. It includes the access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radiotelephone stations constituting a part of a local telephone system and any facility or service provided in connection with local telephone service. It also includes either:

(1) A telephonic quality communication for which there is a toll charge for the service that varies in amount with either the distance or elapsed transmission time, or the distance and elapsed transmission time, of each individual communication; or

(2) A service which entitles the subscriber, upon payment of a periodic charge (whether a flat charge or a charge based upon total elapsed transmission time), to the privilege of a predetermined amount of units or dollars of telephonic communications or an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radiotelephone stations in a specified area which is outside the local telephone system area in which the station provided with the service is located.

(c) Billing Agent. "Billing Agent" shall mean any person that submits a bill to a service user on behalf of another person who is a service supplier, reseller or billing aggregator. A billing agent is not considered to be a service supplier for intrastate telephone communication services provided by or billed on behalf of that person.

(d) Billing Aggregator. "Billing Aggregator" shall mean any person engaged in the business of facilitating the billing and collection of charges for intrastate telephone communication services by aggregating the information about telephone communication services provided by one or more service suppliers and submitting the combined information to one or more local exchange carriers for billing and collection. The billing aggregator may contract with service suppliers to (i) receive call information detail from one or more service suppliers and submit that call information detail to one or more local exchange carriers acting as billing agents (ii) receive payments from local exchange carriers acting as billing agents for disbursement as directed by service suppliers and (iii) prepare and file returns and remit the surcharge to the Board in the manner provided in the applicable contract. A billing aggregator shall identify all service suppliers on whose behalf it will prepare and file returns at such the time and in such form as the Board requests.

(e) Prepaid Telephone Calling Card. "Prepaid telephone calling card" means any card, or other identifier such as an authorization number or access code, which is purchased in advance of use of telephone services, and entitles the holder of the card or user of the authorization number or access code to a specified dollar amount or number of minutes of telephone service, where dollar amounts or minutes for telephone services used are deducted from the amount of prepaid service available on the prepaid telephone calling card as local and long distance telephone services are provided to the user of the prepaid telephone calling card.

(f) Mobile Telephony Service. "Mobile telephony service" has the same meaning as defined in Section 224.4 of the Public Utilities Code.

(g) Prepaid Mobile Telephony Services. "Prepaid mobile telephony services" means the right to utilize and/or access mobile telecommunications services or information services, including the download of digital products delivered electronically, content, and ancillary services, or both telecommunications services and information services, that must be purchased in advance of usage in predetermined units or dollars and are utilized by means of a mobile device. For these purposes, "telecommunications service" and "information service" have the same meanings as defined in Section 153 of Title 47 of the United States Code.

(h) Direct Seller. "Direct seller" means a prepaid MTS provider or service supplier, as defined in Revenue and Taxation Code section 41007, that makes a sale of prepaid mobile telephony services directly to a prepaid consumer for any purpose other than for resale in the regular course of business.

A direct seller includes, but is not limited, to any of the following:

(1) A telephone corporation, as defined by section 234 of the Public Utilities Code.

(2) A person that provides "interconnected Voice over Internet Protocol (VoIP) service," as that term is defined in section 285 of the Public Utilities Code.

(3) A “retailer engaged in business in this state,” as defined by Revenue and Taxation Code section 6203, that is a member of the same commonly controlled group, as defined in Revenue and Taxation Code section 25105, or that is a member of the same combined reporting group, as defined in paragraph (3) of subdivision (b) of section 25106.5 of Title 18 of the California Code of Regulations, as an entity described in paragraph (1) or (2).

**Regulation 2422. Returns, Reporting and Payment.**

Reference: Sections 41033, 41051, 41052, ~~and 41053~~, and 42021, Revenue and Taxation Code.

Returns filed under the Emergency Telephone User Surcharge law must comply with the four requirements listed below:

(a) On or before the last day of the second month ~~of following each reporting period~~, as assigned by the Board, ~~calendar quarter~~ every service supplier shall file an emergency telephone users surcharge return on a form prescribed by the Board for the preceding calendar month, quarter or calendar year. The return shall be signed by a responsible officer or agent of the service supplier and shall be accompanied by a payment for the surcharge due. All remittances shall be payable to the State Board of Equalization.

(b) A direct seller of prepaid mobile telephony services is required to file a return in the form as prescribed by the Board on or before the due date prescribed above.

(c) A direct seller is required to report to the Board the amount of the prepaid mobile telephony services surcharge collected for the prior fiscal year by September 1<sup>st</sup> of each year starting with fiscal year 2016-17.

(d) At the time of filing each surcharge return the service supplier or direct seller shall provide the Board with a list containing the names and addresses of any service users who have refused to pay the surcharge, the date the surcharge was billed to each customer, the amount of each unpaid surcharge, and the reasons, if any, given by the users for refusing to make such payment. On and after January 1, 1982, such information shall be provided for a service user only if the cumulative uncollected amount for that user totals \$3.00 or more.

**Regulation 2413. *Exemptions from Surcharge.***

*Reference:* Sections 41019 and 41027, Revenue and Taxation Code.

The surcharge does not apply to:

(a) Charges for service or equipment furnished by a service supplier subject to public utilities regulation during any period when the same or similar service or equipment is also available for sale or lease from other than a service supplier subject to public utility regulation.

(b) Charges for service when imposition of such surcharge would be in violation of the Constitution of the United States, the United States Code, or the laws of the State of California. These include charges for service to:

(1) The United States, its unincorporated agencies and instrumentalities, or any state of the United States.

(2) Any incorporated agency or instrumentality of the United States wholly owned by either the United States, or by a corporation wholly owned by the United States.

(3) The American National Red Cross, its chapters and branches.

(4) Insurance companies, including title insurance companies, subject to taxation under California Constitution, Article XIII, Section 28.

(5) Banks, including national banking associations, located within the limits of this state. The exemption for state banks and national banking associations has been repealed beginning with the bank's income year for Bank and Corporation Tax purposes commencing on or after January 1, 1981. The service supplier shall collect the surcharge from each state bank and each national banking association beginning with the first regular billing period applicable to that bank which commences on or after the date the bank becomes subject to the surcharge.

(6) Enrolled Indians who are service users subscribing for service from within the limits of an Indian reservation.

~~(7) Foreign governments and career consular officers and employees of certain foreign governments who are exempt from tax by treaties and other diplomatic agreements with the United States.~~

~~(7)~~ Federal credit unions organized in accordance with the provisions of the Federal Credit Union Act.

(c) Toll charges used in the collection and dissemination of news for public press.

(d) Charges for wide-area telephone service used by common carriers in the conduct of their business.

(e) Charges for intrastate telephone communication services which are exempt from the federal communication services tax pursuant to Section 4253 of the Internal Revenue Code of 1954.



Via Email

January 21, 2015

Ms. Susanne Buehler, Chief  
Tax Policy Division, Sales and Use Tax Department  
State Board of Equalization  
450 N Street  
Sacramento, CA 94279-0092

*Subject: MuniServices – Interested Parties Comments – Implementing AB 1717 (Chapter 885, Statutes of 2014), Prepaid Mobile Telephony Services*

Dear Ms. Buehler,

MuniServices is pleased to respond to the Board of Equalization's (BOE) request for comments by January 21, 2015, on the Initial Discussion Paper for the Proposed Rulemaking to incorporate the provisions of AB 1717 (Chapter 885, Statutes of 2014) regarding prepaid mobile telephony services. Currently, a formal BOE regulation number for implementing AB 1717 is pending.

MuniServices provides a variety of utility users tax (UUT) compliance services for approximately 60 California public agencies, which represent about 70% of the total UUT tax revenue generated in the State of California. MuniServices (and Donald Maynor, Esq.) worked diligently with stakeholders and numerous UUT public agencies over the last five years in the coordination and development of consensus positions on AB 1717 and its predecessor bills.

Now that AB 1717 has been enacted, MuniServices and its client public agencies are keenly interested in the proper and cost-effective implementation of this new state law. To organize and facilitate our "group" involvement, MuniServices is in the process of establishing an informal "UUT Working Group" comprised of city employees with local tax expertise from small and large public agencies. During the coming implementation of AB 1717, and particularly during the BOE's current rulemaking proceeding, the UUT Working Group intends to offer future consensus-based positions on the proper and cost effective implementation of AB 1717. For purposes of these comments, however, the following comments of MuniServices are its own.

January 21, 2015  
Page Two

### General Comments Regarding BOE Rulemaking

MuniServices has reviewed the BOE's "Initial Discussion Paper" and we generally approve contents of the "Discussion Paper" and the proposed "Regulations." MuniServices also shares the BOE's conclusion (at p.12) that the BOE should "work with interested parties to develop guidelines so that everyone can easily understand and comply with their obligations." We also appreciate the BOE's interest in soliciting "comments, suggestions, and input from interested parties" *in additional areas*.

### Specific Comments Regarding BOE Proposed Rulemaking

1. Frequency of UUT Remittances by Direct Sellers. At the "discussion meeting" on January 6<sup>th</sup>, we raised the question as to the frequency of UUT payments by "direct sellers" to local taxing jurisdictions on prepaid wireless services: will they be quarterly or monthly? Two wireless representatives expressed a desire to remit the prepaid UUT on a monthly basis, per the local UUT ordinances. We support that approach, and recommend that the BOE reflect that consensus position in its Regulations.
2. Definition of "prepaid mobile telephony services". At page 10 of the "discussion paper" and at page 2 of Exhibit 1 and Exhibit 4, the BOE proposes to "clarify" the definition of "prepaid mobile telephony services" using the phrase "right to access" rather than "right to utilize" as it reads in *Rev. & Tax Code Sec. 42004(n)*. We would suggest that the clarification read: "right to utilize and/or access".

### Specific Comments and Suggestions in Other Areas

1. BOE Agreement with UUT Public Agency. The BOE properly identifies three statutory inclusions in the BOE Agreement with the UUT public agency where the public agency must: i) certify that its UUT ordinance applies to prepaid MTS; ii) agree to indemnify and hold harmless the BOE for liability for damages resulting from collection pursuant to the Agreement; and, iii) certify the proper "tiered rate" for its UUT. In addition to these three statutory requirements, we would urge the BOE to describe the various obligations of the public agency and the BOE under the statute in collecting and auditing the local tax (other than from direct sellers). This would include how the local agency (or its third party agent) can gain access and review BOE records regarding the local tax on prepaid MTS (*See Rev. & Tax. Code Sec. 42110*).

It would be our strong recommendation, "so that everyone can easily understand and comply with their obligations", that the BOE submit, as soon as possible, a draft agreement to public agencies (who are interested parties) for their review and comments of the Agreement to assure there is a clear understanding of their respective obligations.

January 21, 2015  
Page Three

2. Cost Effective Implementation of AB 1717. Throughout the legislative process of AB 1050 and AB 1717, there was concern and controversy over BOE estimates of its implementation costs. In part, there was a significant difference of opinion as to the number of affected “sellers” and the amount of taxes to be collected. Only actual implementation will determine those numbers. *[See Rev. & Tax. Code Sec. 42109 and Section 10(b) of AB 1717 requiring a BOE report to the Legislature of actual costs revenues and number of sellers for calendar year 2016].*

However, we believe that good opportunities (if not the best opportunities) to explore cost reduction measures will occur during the *earliest stages of implementation*. We, therefore, strongly urge the BOE and other stakeholders to vigorously to pursue those opportunities now. Accordingly, with respect to the local UUT on prepaid MTS, we would urge the BOE to share its current estimates of implementation costs allocated for particular local tax activities as soon as possible. This would give public agency “interested parties” the opportunity to recommend possible alternatives to reduce those BOE costs. In particular, *Revenue and Taxation Code Section 42103(f)* includes an important provision that allows the BOE to take advantage of existing local resources or expertise for the collection, auditing or responding to inquiries regarding the local UUT on prepaid MTS. For example, local government resources may be a cost effective in developing the local prepaid MTS rates for individual UUT public agencies for the BOE website *[See Rev. & Tax. Code Sec. 42010 (c) (1)]*.

## Conclusion

MuniServices appreciates the opportunity to submit comments and recommendations, and we will continue to participate in the BOE’s Rulemaking process to achieve the mutual goals of the various stakeholders and especially the proper and cost efficient implementation of AB 1717. Should you have any questions or require additional information please contact me or colleague Fran Mancina, Vice President, Government Relations at 559.288.7296 or Donald H. Maynor, Esq. at 650-327-2894 or maynor1@comcast.net.

Sincerely,



Brenda Narayan, Director of Government Relations  
916.261.5147 or [brenda.narayan@muniservices.com](mailto:brenda.narayan@muniservices.com)

cc: Robert Wilke, BOE Business Taxes Committee ([Robert.Wilkie@boe.ca.gov](mailto:Robert.Wilkie@boe.ca.gov))  
Donald Maynor, Esq.



January 21, 2015

Susanne Buehler, Chief  
Tax Policy Division  
Sales and Use Tax Department  
State Board of Equalization  
PO Box 942879  
Sacramento, CA 94279

**Re: Proposed Rulemaking with respect to Prepaid Mobile Telephony Services**

**SENT VIA EMAIL**

Dear Ms. Buehler,

On behalf of CTIA-The Wireless Association, the trade association for the wireless communications industry, and our member companies, we hereby submit comments regarding the BOE's Proposed Rulemaking with respect to Prepaid Mobile Telephony Services, dated December 22, 2014. We would like to thank the BOE staff for the opportunity to provide feedback.

Overall, we appreciate that the proposed regulations appear consistent with AB 1717, and CTIA has only one proposed modification to raise at this time. Proposed Administration Regulation at subsection (d) requires a receipt that lists a number of items including (d)(3), "The sales price subject to the surcharge and local charges."

We respectfully propose adding a clarification to ensure "tax included" pricing can be provided on the receipt. Under tax included pricing, providers market, statewide and nationally, a single price for a prepaid wireless plan that includes all applicable taxes, regardless of jurisdiction. For example, a \$50 "tax-included" wireless prepaid plan will, to the consumer, still be \$50 after taxes are applied, whether purchased in Los Angeles or Sacramento, although the two jurisdictions apply different taxing rates. It would be confusing to the consumer for a \$50 plan to be listed under many different "sales prices" across the state, depending on the jurisdiction.

Therefore, we respectfully propose adding clarifying language to (d)(3), that retailers, while itemizing the amount of taxes collected, may list a "tax included" price on the receipt instead of the sales price. For example, a sentence could be added at the end of (d) or to (d)(3), as follows:

Nothing herein shall prevent the use of a "tax included price" which would separately state the amount of the prepaid MTS surcharge or local charge collected from the prepaid customer but would not state the sales price subject to the surcharge or local charges.

This is consistent with the language of AB 1717, which requires retailers to notify the customer of the amount of taxes collected. Revenue and Taxation Code section 42010(i) of AB 1717 provides:

The amount of the combined prepaid MTS surcharge and local charges shall be separately stated on an invoice, receipt, or other similar document that is provided to the prepaid consumer of mobile telephony services by the seller, or otherwise disclosed electronically to the prepaid consumer, at the time of the retail transaction.

Thus, CTIA's proposed clarification is consistent with transparency goals of AB 1717 but preserves the ability of providers to maintain simple, statewide tax included pricing on the receipt.

Please contact CTIA's California Government Affairs Counsel, Steve Carlson, at [scarlson@stevecarlsonassociates.com](mailto:scarlson@stevecarlsonassociates.com) if you have any questions. Thank you for your work on this regulation and for considering our comments. We look forward to continuing to work with staff and the Board.

Sincerely,

A handwritten signature in black ink, reading "Jamie Hastings". The signature is written in a cursive, flowing style.

Jamie Hastings  
Vice President, External and State Affairs  
CTIA-The Wireless Association ®